this money and yet he allowed this loss of income as if it was certain. For this reason their Lordships conclude that the learned judge erred in principle. Both parties agree that since nineteen years have elapsed from the date of the accident it would be quite inappropriate for this case to be remitted for further consideration by the trial judge and therefore their Lordships must make their own assessment, as the parties agreed that they should.

Although Dr. Underwood had completed his training in Japan in 1961 his earnings had not been significantly improved by practice as a major plastic surgeon by the date of the accident in 1967. He gave explanations for that by pointing out that he had no facilities for general anaesthesia, that his opportunity for travelling to Kuala Lumpur to use the facilities of the Assunta Hospital were limited by other commitments, and that he planned and ultimately put into execution the construction of a new hospital with these facilities at Kuala Kangsar which was not ready until 1968. In these circumstances their Lordships think it right to assess the change that Dr. Underwood would have become a major plastic surgeon with the earning pattern found by the trial judge at a level which would allow him 50% of those additional earnings as a proper award. The pre-trial loss of income would therefore be $499,500. For the post-trial loss, their Lordships think it reasonable, as did the Federal Court, to assume a working life of 8 years from the date of the trial with a multiplier of 6 years. Discounted at 50% for the reason which has just been explained, this gives an award for post-trial loss of $522,000.

Counsel for Dr. Underwood did not insist in his original submission that the rates of interest awarded by the trial judge should be restored and was content to accept the reduced rates awarded by the Federal Court.

Their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that this appeal should be allowed, that the order of the Federal Court should be amended by ordering that there should be an award to Dr. Underwood of $499,500 for pre-trial loss of earnings and of $522,000 for post-trial loss of earnings and that the award of $51,000 as general damages for loss of future earning capacity ought to be deleted from the order. The appellant is entitled to the costs of the appeal to this Board and to his costs before the Federal Court.

Appeal allowed.

Solicitors: *Turner Kenneth Brown; Le Brasseur & Bury.*

SYARIKAT KEWANGAN MELAYU RAYA v. MALAYAN BANKING BHD.

[P.C. (Lord Keith of Kinkel, Lord Brightman, Lord Griffiths, Lord Mackay of Clashfern & Lord Oliver of Aylmerton) May 1 & 22, 1986]

[Privy Council Appeal No. 68 of 1984]

Land Law – Charged land – Application for sale – Land subject to two charges – Single account – Notice of default – Whether there should have been a separate notice for each charge – Whether each notice should have specified a separate breach for each charge – Notice citing both charges and lumping together sum due under both charges – National Land Code, ss. 241, 253, 254, 268 & Form 16D.

In this case the appellant was the registered proprietor of land and on April 10, 1965 it charged the land to the respondent to secure loan facilities by way of bank overdraft in the sum of $400,000 and interest. In 1967 the appellant executed a further charge to the respondent to secure further loan facilities of $180,000 and interest. The amounts secured by the two charges were advanced to the appellant on a single account with the respondent. In 1980 the respondent's solicitors demanded payment of the overdraft which at that time, together with interest, amounted to $2,374,382.24. The demand was not complied with and the respondent served on the appellant a statutory notice in Form 16D. The notice not having been complied with application was made for an order of sale. The Collector of Land Revenue after holding an inquiry ordered the land to be sold by public auction. The appellant thereupon applied in the High Court to set aside the order. The grounds of the appellant's application was (a) that Form 16D is headed "Notice of default with respect to a charge" and that it was inappropriate to issue a single notice in respect of the whole sum, which was secured not by "a charge" but by two charges. (b) that there should have been two notices specifying how much was claimed under each charge. The application was dismissed in the High Court and the appeal to the Federal Court was also dismissed – see [1984] 1 M.L.J. 115. The appellant appealed and before the Privy Council the first ground was abandoned. It was no longer contended that two separate notices were required, but it was argued that the single notice was invalid on the ground that it failed to specify in relation to each charge the separate specific sum which is secured by that charge the failure to pay which constituted the breach relied on.

Held, dismissing the appeal: the letter of demand written by the solicitors for the respondents, which referred to the breach simply as the failure to repay the principal and interest secured by the charge was a sufficient specification in this case. The perfectly accurate specification of the global amount due on the single account secured by both

charges cannot possibly have the effect of rendering insufficiently specific that which would have been sufficiently specific without any reference at all to the actual amount. The appellant know perfectly well that it had one account and one account only with the respondent and the second charge was raised specifically for the purpose of securing an additional facility on that very account. It is quite inconceivable that the appellant could have been in any way misled or prejudiced simply because the aggregate amount due was not apportioned between the two charges. There is not any hint or suggestion that it ever sought such an apportionment and the amount specified as due on both charges was conceded to be due in fact.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Nicholas Stewart (*P.S. Ranjan* with him) for the appellant.

George Newman Q.C. (*Too Hing Yeap* with him) for the respondent.

Cur. Adv. Vult.

Lord Oliver of Aylmerton (delivering the judgment of the Board): This is an appeal from an order of the Federal Court of Malaysia (Salleh Abas C.J. (Malaya), Mohamed Azmi and Syed Agil Barakbah F.JJ.) dismissing with costs an appeal from the dismissal by the High Court of Malaysia (Peh Swee Chin J.) on November 12, 1982 of the appellant's motion to set aside an order made by the Collector of Land Revenue, Kelang, for the sale of certain land charged by the appellant in favour of the respondent.

The relevant facts can be shortly stated and were not in dispute. At all material times the appellant (to whom it will be convenient to refer as "the mortgagor") was the registered proprietor of certain land held under EMR 7188, Lot 1800, Mukim and Daerah of Kelang. On April 10, 1965 the mortgagor charged the land by way of first charge in favour of the respondent (to whom it will be convenient to refer as "the Bank") to secure loan facilities by way of bank overdraft in the sum of $400,000 and interest. In 1967, the mortgagor required to increase its overdraft and on September 21, 1967, it executed a further charge to secure further loan facilities of $180,000 and interest. Both charges were duly registered. The amounts secured by the two charges were advanced to the mortgagor on a single account with the Bank. By the autumn of 1980 the amount of the mortgagor's overdraft on the account exceeded $2,000,000 and, on October 9, 1980, the Bank's solicitors wrote a letter demanding repayment within seven days of the sum outstanding which then amounted to $2,374,382.24, together with interest thereon at the rate of 9% per annum with monthly rests. That demand was not complied with and on November 13, 1980 the Bank served on the mortgagor a statutory notice in Form 16D pursuant to section 254 of the National Land Code. A second undated notice in identical form was subsequently served under cover of a letter from the Bank's solicitors dated November 28, 1980.

The relevant provisions of the National Land Code are to be found in sections 253 and 254 which are, respectively, in the following terms (so far as material):-

Section 253

"(1) The provisions of this Chapter shall have effect for the purpose of enabling any chargee to obtain the sale of the land or lease to which his charge relates in the event of a breach by the chargor of any of the agreements on his part expressed or implied therein."

Section 254:-

"(1) Where, in the case of any charge, any such breach of agreement as is mentioned in subsection (1) of section 253 has been continued for a period of at least one month or such alternative period as may be specified in the charge, the chargee may serve on the chargor a notice in Form 16D –

(a) specifying the breach in question;

(b) requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge; and

(c) warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale.

(2) .....

(3) If at the expiry of the period specified in any such notice the breach in question has not been remedied –

(a) the whole sum secured by the charge shall (if it has not already done so) become due and payable to the chargee; and

(b) the chargee may apply for an order for sale in accordance with the following provisions of this chapter."

No point now arises on the form (as opposed to the content) of the notices served by, or on behalf of, the Bank. Each was addressed to the mortgagor described as "chargor under the charges described in the schedule below of the land so described". It went on to recite a breach of the provisions of the charges "by failing to make payment on demand of the sum of Ringgit

2,374,382.24 being the whole outstanding balance on your account as at September 10, 1980 with interest thereon at the rate of 9% p.a. with monthly rests from September 11, 1980 to the date of payment or any part thereof pursuant to a notice in writing dated October 9, 1980 and received by you on or about October 9, 1980." It continued by specifying that the breach had continued for a period of one month prior to the date of this notice and required the breach to be remedied within one month from service. It concluded with the statutory warning that, on non-compliance, application would be made for an order for sale.

Neither notice having been complied with, application was made in accordance with the provisions of the Code to the Collector of Land Revenue Kelang for an order for sale. After holding an inquiry the Collector on June 3, 1982 ordered that the land be sold by public auction under a reserve of $1,000,000 and certified the amount due at that date to be $2,840,826.94. On July 30 1982 the mortgagor issued an Originating Motion in the High Court to set aside the order. That was supported by an affidavit specifying that the ground of the application was that Form 16D is headed "Notice of Default with respect to a charge" and that it was inappropriate to issue a single notice in respect of the whole sum of $2,374,382.24 which was in fact, as the notice itself indicated, secured not by "a charge" but by two separate charges. There should, it was said, have been two notices specifying how much was claimed under each charge.

The point raised, which is not one of obvious appeal either as a matter of merit or of common sense, had, it appears, been taken before the Collector but with no success. It met with no better fate in the High Court. A valiant attempt to persuade the Federal Court likewise failed. In each court, the argument was based on two propositions, namely, first, that as a matter of construction Form 16D was appropriate only for a single charge and that there should therefore have been a separate notice for each charge and secondly, that in any event each notice should have specified a separate breach for each charge, viz. the failure to pay a specific sum secured by each. The notice was, it was argued, insufficiently specific and thus prejudicial to the mortgagor in some way which their Lordships have been entirely unable to discern. Thus, it was said that the notice was invalid and since a valid notice is a condition precedent to an application for sale under the Code, the order made by the Collector must be set aside.

Their Lordships are not surprised that the first of these grounds received short shrift in the courts below. They can only express their surprise that it was raised at all and, happily and wisely, it was abandoned in the appellant's case before this Board. It is thus no longer contended that two separate notices are required, but it is now argued that the single notice is invalid, not because it is a single notice referring to two charges but on the ground that it fails to specify in relation to each charge the sum which is secured by that charge the failure to pay which constitutes the breach relied on. This ground is, in their Lordships' view, equally bereft of any merit.

One of the curious features of the case is that from first to last no reference appears to have been made at any stage to the actual contents or terms of the charges and they have not been produced in evidence. The overwhelming likelihood is that, although specifying the sums for which the land charged was to stand as security, they contained also covenants on the part of the mortgagor to pay all amounts outstanding on the mortgagor's account with the Bank whether secured or not. But assuming for a moment the absence of such a covenant, their Lordships are entirely unable to see why it should be contended that the breach relied on by the Bank has been insufficiently specified. Mr. Stewart, who has said everything that could be said in support of the appeal, was compelled to concede that a notice, particularly one following a letter of demand such as the one written by the Bank's solicitors on October 9, 1980, which referred to the breach simply as a failure to repay the principal and interest secured by the charge, would be a sufficient specification. That is exactly what, effectively, the notice did and the perfectly accurate specification of the global amount due on the single account secured by both charges cannot, in their Lordships' opinion, possibly have the effect of rendering insufficiently specific that which would have been sufficiently specific without any reference at all to the actual amount. The mortgagor knew perfectly well that it had one account and one account only with the Bank and, indeed, the second charge was raised specifically for the purpose of securing an additional facility on that very account. It is quite inconceivable that the mortgagor could have been in any way misled or prejudiced simply because the aggregate amount due was not apportioned between the two charges. There is not, indeed, any hint or suggestion that it ever sought such an apportionment and the amount specified as due on both charges is conceded to be due in fact.

The decisions of the Collector, Peh Swee Chin J. and the Federal Court were plainly right and their Lordships will, accordingly, advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Kingsford Dorman; Coward Chance.*

ENG JOO LEE PRIVATE LIMITED v. KIAN CHIANG GRANITE QUARRY COMPANY (PTE) LIMITED.

[P.C. (Lord Keith of Kinkel, Lord Templeman, Lord Griffiths, Lord Ackner & Lord Oliver of Alymerton) May 12-15, 19 & June 19, 1986]

[Privy Council Appeal No. 38 of 1984]

Land Law – Lease for quarrying – Grant of licence to extract granite from quarry until expiry of lease – Whether there was oral agreement for renewal of agreement – Whether agreement conditional upon grant of a new lease of quarry – Whether original agreement illegal – Sand and Granite Quarries Act (Cap. 282), ss. 4(1), 5(6) & 20(2).

Sand and Granite Quarries – Licence required – Licence not transferable – Sand and Granite Quarries Act (Cap. 282), ss. 4(1), 5(6) & 20(2).

Practice and Procedure – Appeal – Questions of fact.

The respondents in this case had a lease of a granite quarry in Pulau Ubin for a term of 10 years from September 1, 1969. By a written agreement dated May 2, 1975 the respondents granted the appellants a licence to extract granite from the quarry from May 1, 1975 until the expiry of the lease. It was also agreed that if the Commissioner of Lands offered a further lease to the respondents, then the appellants shall be given priority to continue with the existing arrangement subject to adjustment of the royalty payable. Negotiations took place at the end of 1978 and early in 1979 for the agreement to be renewed. There was a dispute as to whether an agreement was reached. The appellants contended that an oral agreement was concluded at a meeting on July 10, 1979 to the effect that the appellants' licence would be renewed subject only to the respondents' obtaining the renewal of the statutory quarry licence. The respondents denied that any agreement was concluded and maintained that at all times negotiations between the parties were subject to the respondents being granted a new lease of the quarry. The respondents commenced action claiming possession of the quarry and payment of arrears of licence fees. The appellants counterclaimed for specific performance of the alleged oral agreement for the renewal of the agreement and while admitting the arrears, claimed to set off damages for breach of the alleged agreement. The primary questions for decision were issues of fact, namely whether an oral agreement was concluded for the renewal of the 1975 agreement and, if so, whether the agreement was conditional upon the grant to the respondents by the Commissioner of Lands of a new lease of the quarry. Sinnathuray J. in the High Court held ,that no contract was concluded at the meeting of July 10, 1979 and further that at that meeting it was a condition of any agreement for a new licence that the respondents were themselves granted a new lease. He accordingly gave the respondents judgment for possession. He also held that the 1975 agreement was illegal as the appellants had no licence for the use of the land for the quarry, the licence being granted solely to the respondents. Nevertheless, he gave judgment for the respondents for the arrears claimed (see [1982] 1 M.L.J. 22).

The appellants appealed to the Court of Appeal which dismissed the appeal. The appellants appealed further to the Privy Council.

Held: (1) the conclusion of the learned trial judge that there was no concluded agreement for renewal was a finding of fact which was not only clearly open to him on the evidence, but which was strongly supported by the contemporary documents and probabilities;

(2) having found that the 1975 agreement was illegal the learned trial judge was in error in giving judgment for the respondents for the arrears of licence fees. The provision in the judgment for the payment by the appellants of the arrears must be deleted.

Cases referred to:

(1) *Whitehouse* v. *Jordan* [1981] 1 All E.R. 267, 276 & 286.
(2) *The Hontestroom* [1927] A.C. 37, 47 & 48.

COURT OF APPEAL, SINGAPORE (Wee Chong Jin C.J., Kulasekaram & Chua JJ., April 3, 1984).

Philip Cox Q.C. (*Lee Mun Hooi* with him) for the appellants.

Gavin Lightman Q.C. (*Wong Pong Tong* with him) for the respondents.

Wee Chong Jin C.J. (delivering the Judgment of the Court) : By a lease dated September 5, 1978 pursuant to an agreement for lease dated January 6, 1970 the President of the Republic of Singapore ("the lessor") demised to Kian Chiang Granite Quarry Company (Pte.) Ltd. ("the plaintiffs") for a term of 10 years from September 1, 1969 the land known as Plot No. 10, Lot 102 pt. Mukim XXXII at Pulau Ubin, Singapore ("the quarry").

The lease (so far as is material) provided as follows:

(1) that the plaintiffs should grant to the defendants a licence to use and manage the Quarry for the purpose of quarrying granite; and